

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Comcast Cablevision of Philadelphia, Inc., Comcast	)	
Cablevision of Mercer County, Inc., Comcast	)	CSR-6195-A
Cablevision of Southeast Pennsylvania, Inc., and	)	
Comcast Cablevision of Pennsylvania, LLC.	)	
	)	
For Modification of Television Market of	)	
Television Station WBPH, Bethlehem,	)	
Pennsylvania	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 21, 2003**

**Released: October 23, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Comcast Cablevision of Philadelphia, Inc., Comcast Cablevision of Mercer County, Inc., Comcast Cablevision of Southeast Pennsylvania, Inc., and Comcast Cablevision of Pennsylvania, LLC. ("Comcast") filed the captioned petition which seeks to exclude from the market of television station WBPH, Channel 60, Bethlehem, Pennsylvania, certain communities served by their cable systems in Mercer County, New Jersey, and in Philadelphia and Delaware County, Pennsylvania (the "Communities"). Sonshine Family Television, Inc. ("Sonshine"), licensee of WBPH, filed an opposition to the petition, and Comcast filed a reply. For the reasons stated below, we deny the petition.

**II. BACKGROUND**

2. Pursuant to Section 614 of the Communications Act and the rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992* ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.<sup>1</sup> A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.<sup>2</sup> A DMA is a

<sup>1</sup>8 FCC Rcd 2965, 2976-2977 (1993).

<sup>2</sup>Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. See *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order"); 47 C.F.R. §76.55(e).

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geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.<sup>3</sup>

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.<sup>4</sup>

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as –

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.<sup>5</sup>

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the areas which they serve and which

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<sup>3</sup>For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

<sup>4</sup>47 U.S.C. §534(h)(1)(C).

<sup>5</sup>*Id.*

form their economic market.

\* \* \* \*

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.<sup>6</sup>

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.<sup>7</sup>

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system head end locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system head ends and communities in relating to the service areas.

Note to paragraph [2]: Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.<sup>8</sup>

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

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<sup>6</sup>H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

<sup>7</sup>*Must Carry Order*, 8 FCC Rcd at 2977 n. 139.

<sup>8</sup>The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

- (5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.
- (6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.<sup>9</sup>

5. Petitions to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

### III. DISCUSSION

6. Station WBPH is located in the Philadelphia, Pennsylvania, DMA as are the Communities served by Comcast's cable systems at issue. Comcast requests that the Commission modify WBPH's television market by excluding the Communities served by its cable systems from WBPH's television market. Based on information presented in support of this request, Comcast contends that WBPH has never been carried on these cable systems, is geographically distant from the cable systems, provides a Grade B signal over some but not all of the Communities, doesn't broadcast programming addressed to the specific interests of residents of the Communities, and achieves no measurable viewing audience in the Communities where the cable systems are located.<sup>10</sup> Comcast also provided information showing that the distances from Bethlehem, Pennsylvania, WBPH's community of license, to the Communities range from 36 to 56 miles, and argues that the Communities are too distant to be considered within the station's market.<sup>11</sup> Comcast asserts that its cable systems carry other television stations that provide coverage of news, sporting events and issues of concern to the Communities its cable systems serve.<sup>12</sup> Comcast argues that this evidentiary showing demonstrates that although some Bethlehem residents may look to the Philadelphia television market, Philadelphia-area residents of these Communities do not look to Bethlehem, and that this record supports deletion of the Communities served by Comcast from WBPH's television market.

7. Sonshine, in opposition, asserts that Comcast's contentions relating to WBPH's Grade B signal coverage, historic carriage, and viewership in the Communities is based on outdated information that disregards the fact that WBPH has operated since July 8, 2002, with increased power from 12 kW to 2,950 kW radiated power. Sonshine further states that WBPH has since April 1, 2003, been carried by Philadelphia's other cable system, Urban Cable Works, to more than 60,000 subscribers served by that operator; and that since July, 2003, Comcast has been providing WBPH to its subscribers in Montgomery County, which, like Delaware County, abuts Philadelphia, and in nearby Bucks County, Pennsylvania.

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<sup>9</sup>47 C.F.R. §76.59(b).

<sup>10</sup>Petition at 3-8.

<sup>11</sup>*Id.* at 5.

<sup>12</sup>*Id.* at 7.

Sonshine also states that Comcast carries on all cable systems subject to this petition television station WFMZ-TV, Allentown, Pennsylvania, which transmits from the same tower as does WBPH. Sonshine argues that in these circumstances the Commission should give reduced weight to the outdated information provided by Comcast regarding lack of historic carriage of WBPH and the absence of viewership. Sonshine contends that the Commission must instead consider the station's current operations, give greater weight to the second part of first statutory factor, and credit Comcast cable systems' carriage of "other stations [WFMZ-TV] located in the same area,"<sup>13</sup> as well as its carriage of WBPH in the other nearby communities.<sup>14</sup>

8. Sonshine also provided engineering data showing that with its recently increased power, WBPH's Grade B signal contour now either covers each of the Communities at issue or reaches within 9.3 or less miles of those Communities not covered.<sup>15</sup> Sonshine further asserts that WBPH's 36 dBu contour proposed in its pending application for DTV facilities covers Philadelphia, Mercer County, and all but four of the Comcast served Communities in Delaware County.<sup>16</sup> Sonshine urges the Commission to follow precedent established in *Comcast Cablevision* and refrain from excluding those communities lying at small distances beyond WBPH's Grade B contours from the station's market.<sup>17</sup>

9. Section 614(h)(1)(C) of the Communications Act requires the Commission to include or exclude particular communities from a television station's market for the purpose of ensuring that a television station is carried in the areas which it serves and which form its economic market.<sup>18</sup> We have reviewed the record before us with full consideration of the information provided by Comcast addressed to the four statutory factors set forth in Section 614(1)(C). We cannot give decisive weight to the information provided by Comcast relevant to market modification Factors II-IV - local coverage, coverage by other eligible stations, and viewing patterns. That information does not properly reflect WBPH's current market, in view of the station's commencement of operations under substantially increased radiated power.<sup>19</sup> In contrast, Sonshine provided more current information relevant to the first

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<sup>13</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(I).

<sup>14</sup> Opposition at 4-5, citing *Comcast Cablevision of Burlington County, Inc.*, 16 FCC Rcd 10809, 10814 (CSB 2001) ("*Comcast Cablevision*") (weight given to carriage of station on adjacent cable system as reflecting nexus between station and area).

<sup>15</sup> *Id.* at 4-5 and Table 1. Comcast presented WBPH Grade B signal information from the 2002 Edition of Television Factbook, which was based on WBPH's operational parameters before the stations increased power was implemented. Petition at Exhibit 6.

<sup>16</sup> Opposition at 5.

<sup>17</sup> Opposition at 5, citing *Comcast Cablevision*, 16 FCC Rcd at 10814 (proposed power increase credited for increased coverage of cable communities).

<sup>18</sup> See H.R. Rep. No. 628, 102d Cong., 2d Sess. 97 (1992); *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12926 (1999) ("DMAs are a better measure of actual television viewing patterns, and thus serve as a good measure of the economic marketplace in which broadcasters, program suppliers and advertisers buy and sell their services and products.").

<sup>19</sup> WBPH's community coverage information provided by Comcast is based on the station's pre-April, 2003 12 kW operating parameters. See Petition Exhibit 5. Moreover, no evidentiary value may be given to the unverified "Longley-Rice" contour provided by Comcast. See Petition Exhibit 3.

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market modification factor, establishing that WFMZ-TV, Allentown, Pennsylvania, which shares WBPH's transmitter tower, is carried on all of Comcast's cable systems at issue here. Moreover, Sonshine established that WBPH is carried on Comcast's cable systems or other cable systems serving virtually every other community nearby to the Communities at issue here. Sonshine's current operating parameters and carriage information was not mentioned in Comcast's petition nor was it challenged in reply. Comcast's carriage of WFMZ-TV, the other station licensed to the Allentown/ Bethlehem area, and of WBPH in communities near Comcast's cable Communities at issue provides strong evidence that the cable Communities at issue should be considered part of WBPH's market.

10. Sonshine further states that since WBPH began operations with increased power, attention has been directed to the entire Delaware Valley, including Philadelphia, Mercer County, Delaware County and other suburban Philadelphia communities. Sonshine identified several new programs which it contends are designed to serve the interests of the Communities served by Comcast.<sup>20</sup> Comcast disputed the local interest value of that programming.<sup>21</sup> However, in view of our disposition of this case on historical carriage relevant to factor I, we need not definitively weigh the local interest value of the new programming.

11. In *Comcast of Central New Jersey*, the Commission declined to delete from WFMZ-TV's market three communities located in Mercer County, New Jersey, at the edge of WFMZ-TV's Grade B contour.<sup>22</sup> As noted earlier, WBPH and WFMZ-TV both transmit from the same tower. The Grade B contours of both stations provide similar coverage of the respective cable communities at issue.<sup>23</sup> We believe it reasonable, considering these similar circumstances, to conclude here, as in the earlier case, that "Comcast has not demonstrated that the communities it serves lack a sufficient nexus with [WBPH] to warrant deletion of the Communities at issue from [WBPH's] market."<sup>24</sup> We also believe decisive emphasis must be placed on the historical carriage factor, and that substantially less weight should be given to Comcast's outdated information relevant to factors II, II and IV.<sup>25</sup> Accordingly, we conclude that denial of Comcast's market modification petition is consistent with the purposes of Section 614.

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<sup>20</sup> Opposition at 8-12.

<sup>21</sup> Reply at 5-6.

<sup>22</sup> 13 FCC Rcd 1656 (CSB 1997).

<sup>23</sup> Compare Opposition at 4-8 and Table 1, with *Comcast of Central New Jersey*, 13 FCC Rcd 1656, 1661-62 (CSB 1997).

<sup>24</sup> *Comcast of Central New Jersey*, 13 FCC Rcd at 1666.

<sup>25</sup> The Bureau is under no obligation to give particular weight to any of the enumerated statutory factors. See *Time Warner Entertainment Co. v. FCC*, 56 F.3d 151, 175 (D.C. Cir. 1995); accord *Omnipoint Corp. v. FCC*, 78 F.3d 620, 633-634 (D.C. Cir. 1996) (when Congress directs an agency to consider certain factors, the agency simply "must reach an express and considered conclusion about the bearing of a factor, but is not required to give any specific weight to it").

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended,<sup>26</sup> that the petition for special relief filed on behalf of Comcast Cablevision of Philadelphia, Inc., Comcast Cablevision of Mercer County, Inc., Comcast Cablevision of Southeast Pennsylvania, Inc., and Comcast Cablevision of Pennsylvania, LLC in File No CSR 6195-A **IS DENIED**.

13. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>27</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>26</sup> 47 U.S.C. § 534(h); 47 C.F.R. § 76.59.

<sup>27</sup> 47 C.F.R. § 0.283.